

***Notice of Non-Responsive Reply***

On August 10, 2006, a notice under 37 CFR 1.251 initiating reconstruction of application no. 08/428,325 was sent to applicant. On October 17, 2006 applicant submitted a reply to that notice. For the reasons indicated below, the reply was not fully responsive to that notice.

The notice of August 10/ 2006 under 37 CFR 1.251 required applicants provide a copy of applicant's record or produce applicant's record (if any) of:

- 1) All of the correspondence between the Office and applicant for the above-identified application (except for U.S. patent documents),
- 2) a list of such correspondence, and
- 3) a statement that the copy is a complete and accurate copy of applicant's record of all of the correspondence between the Office and the applicant for the above-identified application (except for U.S. patent documents), and whether applicant is aware of any correspondence between the Office and applicant for the above-identified application that is not among applicant's records.

The reply of August 10, 2008 is incomplete due to following omission(s) or matter(s):

1) **The statement required by 37 CFR 1.251(a)(1)(iii) has not been provided;** i.e., the statement that *"the copy of papers produced by applicant on October 17, 2006 is a complete and accurate copy of applicant's record of all of the correspondence between the Office and the applicant for application no. 08/428,325"*, and a statement stating whether *"the applicant is aware of any correspondence between the Office and applicant for application no. 08/428,325 that is not among applicant's records"* was not provided.

2) **The list of the submitted correspondence required by 37 CFR 1.251(a)(1)(ii) has not been provided.**

3) **The papers submitted on October 17, 2006 may be incomplete.** Applicant indicated, in the paper filed on October 17, 2006, entitled *"Transmittal of File Contents in Response to Notice Under 37 CFR 1.251 -- Pending Application"*, that the documents provided were only those listed in PALM (see the second checked box of the above-identified October 17, 2006 transmittal paper). This statement, however, omits any papers submitted after the file was lost, and any other papers that may have been submitted but inadvertently have not been listed in PALM.

Once the file is lost, the PALM records do not include any papers that may have been submitted after the time that the file was lost. There have also been occurrences where papers that have been submitted were inadvertently not listed in PALM. **As applicant indicated that applicant has only submitted those papers that were listed in PALM, i.e., only those papers of record prior to the time that the file was listed as lost, and only those papers that were both submitted AND listed in PALM, it would appear that the papers submitted on October 17, 2006 may be incomplete.**

### ***Conclusion***

The notice under 1.251 explicitly indicated "With regard to a pending application, failure to comply with one of paragraphs (a)(1), (a)(2), or (a)(3) of this section within the time period set in the notice will result in abandonment of the application." and applicant has not complied with the requirement during the time period set. See 37 CFR 1.251(b). Applicant is now given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. **NO extensions of time under 37 CFR 1.136(a) will be permitted.**

Any question regarding this communication should be directed to Ken Parker, SPE 2800 at 571-272-2298.

/Kenneth A Parker/

Supervisory Patent Examiner, Art Unit 2815